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OTL Asia Sdn Bhd (previously known as CKE Transport Agency Sdn Bhd) v Lee Yik Chieh & Ors

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HIGH COURT (PENANG) — CIVIL SUIT NO PA-22NCvC-80–03 OF 2019
KENNETH ST JAMES JC
15 JANUARY 2024

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Tort — Breach of confidence — Disclosure of confidential information — Defendants were plaintiff's former employees — Defendants set up own company — Whether defendants' use or disclosure of plaintiff's confidential information and documents for the benefit of defendants and their company without plaintiff's authorisation or consent, was a breach of defendants' duty of confidentiality to plaintiff — Whether information confidential in nature — Whether information was communicated in circumstances that contained obligation of confidence — Whether there was unauthorised use of information to plaintiff's detriment

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Tort — Conspiracy — Conspiracy to injure plaintiff — Defendants were plaintiff's former employees — Defendants set up own company — Whether defendants' use or disclosure of plaintiff's confidential information for defendants' company operations constituted tort of conspiracy to injure plaintiff — Whether there was agreement or combination of efforts among defendants and their company to injure plaintiff — Whether there were acts committed under this agreement or combination of efforts to injure plaintiff — Whether plaintiff suffered loss and damage

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OTL Asia Sdn Bhd ('the plaintiff') was a company providing cross-border transportation and warehousing services, whilst the defendants were the former employees of the plaintiff. In the present case, the plaintiff alleged that the defendants had used the plaintiff's confidential information (information that was exclusive to the company) for the defendants' own benefit and for the benefit of the company known as Euroasia Total Logistics Sdn Bhd ('ETL') which they set up to do a similar business in the same industry. The plaintiff's causes of action were for breach of confidence and conspiracy to injure. The plaintiff prayed for the following reliefs and remedies: (a) a permanent injunction to restrain the defendants and ETL, and persons associated with them from dealing with or divulging the plaintiff's confidential information and documents ('CIAD'); (b) an order to compel the defendants and ETL, and persons associated with them to 'remove or recover' the plaintiff's CIAD which the defendants and ETL had 'retained or disclosed'; (c) an order for the

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defendants and ETL to affirm an affidavit giving the particulars of 'where' they 'divulged' the plaintiff's CIAD; (d) an order to compel the defendants and ETL to deliver the plaintiff's CIAD which were in their possession to the plaintiff, and to give an undertaking that they no longer had the plaintiff's CIAD; (e) an order for ETL to cease operations; (f) for damages to be assessed; and (g) an order to pay the amount of damages assessed. The issues arose were: (i) whether the defendants' use or disclosure of the plaintiff's CIAD for the defendants' benefit or ETL's benefit, without the plaintiff's authorisation or consent, was a breach of the defendants' duty of confidentiality to the plaintiff; (ii) whether the defendants' use or disclosure of the plaintiff's CIAD for ETL's operations constituted a tort of conspiracy to injure the plaintiff; and (iii) whether the plaintiff was entitled to the reliefs and remedies prayed for.

Held:

(1) The plaintiff had sufficiently proven the three elements for breach of confidence. Firstly, the evidence showed that the plaintiff's CIAD, which contained particulars of price, costs, routes and clients' requirements and preferences, were confidential in nature, quality and character. Secondly, the plaintiff's CIAD were imparted to the defendants in circumstances that placed an obligation of confidence on the defendants — the evidence demonstrated that the defendants, as the plaintiff's employees, were in possession of the plaintiff's CIAD because of their work, which undoubtedly carried with it the obligation to keep the CIAD confidential. Thirdly, the evidence showed that the defendants had downloaded and forwarded the plaintiff's CIAD to themselves and the first plaintiff had also admitted that he partnered with a Thai's public listed company known as WICE to form ETL, with the ambitious objective of listing ETL in five years — this evidence proved that there was unauthorised use of the plaintiff's CIAD by the defendants and ETL to the plaintiff's detriment. In any event, the defendants and ETL did not produce any evidence that directly proved, or any evidence from which it could be inferred, that there was no unauthorised use of the plaintiff's CIAD to the plaintiff's detriment, or conversely, that their use of the plaintiff's CIAD was authorised, or their use of the plaintiff's CIAD did not cause the plaintiff any loss or damage, ie, did not lead to the plaintiff's detriment. For the above reasons, the court found that the defendants and ETL were liable to the plaintiff for the tort of breach of confidence (see paras 67–71 & 77–80).

(2) In relation to the plaintiff's action for conspiracy to injure, the court found that the defendants had authored a template general letter to introduce ETL and its business to potential customers. In this letter, the defendants offered the use of a state-of-the-art appliance which they named the Smart Lock. However, based on the evidence, the court found that the defendants' Smart Lock was a direct reference to the plaintiff's

E-Lock. The fact that the defendants made a direct reference to the plaintiff's E-Lock contributed to the evidence that satisfied two of the three elements of the cause of action for conspiracy to injure, namely: (a) there was an agreement or a combination of efforts among the defendants and ETL to injure the plaintiff; and (b) there were acts committed under this agreement or combination of efforts to injure the plaintiff. As for the third element, based on the evidence, the plaintiff had suffered a considerable drop in its monthly revenue according to clients in the period during and after ETL's incorporation and the defendants leaving the plaintiff. Based on the above, the plaintiff had satisfied, on the balance of probabilities, the elements for the cause of action of conspiracy to injure. The court found that, more likely than not, there was agreement or some combination of efforts on the parts of the defendants and ETL, as a legal entity, which were made and done to injure the plaintiff (namely to take or divert business away from the plaintiff) (see paras 84–86, 88, 98 & 101).

[Bahasa Malaysia summary

OTL Asia Sdn Bhd ('plaintif') ialah sebuah syarikat yang menyediakan perkhidmatan pengangkutan dan pergudangan rentas sempadan, manakala defendan-defendan adalah bekas pekerja-pekerja plaintif. Dalam kes ini, plaintif mendakwa bahawa defendan-defendan telah menggunakan maklumat sulit plaintif (maklumat yang eksklusif kepada syarikat) untuk kepentingan defendan-defendan sendiri dan untuk kepentingan sebuah syarikat yang dikenali sebagai Euroasia Total Logistics Sdn Bhd ('ETL') yang ditubuhkan oleh defendan-defendan untuk menjalankan perniagaan yang serupa dalam industri yang sama. Kausa-kausa tindakan plaintif adalah berdasarkan tort pecah kerahsiaan dan konspirasi untuk mencederakan. Plaintif memohon relif dan remedi berikut: (a) injunksi kekal untuk menghalang defendan-defendan dan ETL, dan orang yang berkaitan dengan mereka daripada berurusan dengan atau mendedahkan maklumat dan dokumen sulit plaintif ('CIAD'); (b) perintah untuk memaksa defendan-defendan dan ETL, dan orang yang berkaitan dengan mereka untuk 'mengeluarkan atau mendapatkan semula' CIAD plaintif yang defendan-defendan dan ETL telah 'kekalkan atau dedahkan'; (c) perintah untuk defendan-defendan dan ETL untuk mengikrarkan afidavit yang memberikan butir-butir 'di mana' mereka 'mendedahkan' CIAD plaintif; (d) perintah untuk memaksa defendan-defendan dan ETL menyerahkan CIAD plaintif yang berada dalam milikan mereka kepada plaintif, dan untuk memberi aku janji bahawa mereka tidak lagi mempunyai CIAD plaintif; (e) perintah untuk ETL menghentikan operasi; (f) perintah pentaksiran ganti rugi; dan (g) perintah untuk membayar amaun ganti rugi yang ditaksirkan. Isu-isu yang timbul ialah: (i) sama ada penggunaan atau penzahiran defendan-defendan terhadap CIAD plaintif untuk kepentingan defendan-defendan atau kepentingan ETL, tanpa kebenaran atau persetujuan plaintif, merupakan pelanggaran kewajipan

kerahsiaan defendan-defendan kepada plaintif; (ii) sama ada penggunaan atau penzahiran defendan-defendan terhadap CIAD plaintif untuk operasi ETL terjumlah kepada tort konspirasi untuk mencederakan plaintif; dan (iii) sama ada plaintif berhak mendapat relief dan remedi yang dipohon.

Diputuskan:

(1) Plaintif telah membuktikan dengan cukup ketiga-tiga elemen yang terlibat bagi tort pecah kerahsiaan. Pertama, keterangan menunjukkan bahawa CIAD plaintif, yang mengandungi butiran harga, kos, laluan dan keperluan dan keutamaan pelanggan, adalah sulit dari segi sifat, kualiti dan watak. Kedua, CIAD plaintif telah diberikan kepada defendan-defendan dalam keadaan yang meletakkan obligasi kerahsiaan kepada defendan-defendan — keterangan menunjukkan bahawa defendan-defendan, sebagai pekerja-pekerja plaintif, memiliki CIAD plaintif atas sebab kerja mereka, yang tentunya bersekali dengan kewajipan untuk merahsiakan CIAD tersebut. Ketiga, keterangan menunjukkan bahawa defendan-defendan telah memuat turun dan memajukan CIAD plaintif kepada diri mereka sendiri dan plaintif pertama juga telah mengakui bahawa dia bekerjasama dengan sebuah syarikat tersenarai awam Thailand yang dikenali sebagai WICE untuk membentuk ETL, dengan objektif bercita-cita tinggi untuk menyenaraikan ETL dalam tempoh lima tahun — keterangan ini membuktikan bahawa terdapat penggunaan tanpa kebenaran CIAD plaintif oleh defendan-defendan dan ETL sehingga menjejaskan plaintif. Dalam apa jua keadaan, defendan-defendan dan ETL tidak mengemukakan apa-apa keterangan yang secara langsung membuktikan, atau apa-apa keterangan yang boleh disimpulkan, bahawa tiada penggunaan tanpa kebenaran CIAD plaintif yang menjejaskan plaintif, atau sebaliknya, bahawa penggunaan mereka terhadap CIAD plaintif telah dibenarkan, atau penggunaan CIAD plaintif oleh mereka tidak menyebabkan apa-apa kerugian atau kerosakan kepada plaintif, dalam erti kata lain, tidak menjejaskan plaintif. Atas sebab-sebab di atas, mahkamah mendapati defendan-defendan dan ETL bertanggungjawab kepada plaintif bagi tort pecah kerahsiaan (lihat perenggan 67–71 & 77–80).

(2) Berhubung dengan tindakan plaintif bagi konspirasi untuk mencederakan, mahkamah mendapati defendan-defendan telah menulis templat surat am untuk memperkenalkan ETL dan perniagaannya kepada bakal pelanggan. Dalam surat ini, defendan-defendan menawarkan penggunaan perkakas tercanggih yang mereka namakan Smart Lock. Bagaimanapun, berdasarkan keterangan, mahkamah mendapati bahawa Smart Lock defendan-defendan adalah rujukan terus kepada E-Lock plaintif. Fakta bahawa defendan-defendan membuat rujukan terus kepada E-Lock plaintif menyumbang kepada keterangan

yang memenuhi dua daripada tiga elemen kausa tindakan bagi konspirasi untuk mencederakan, iaitu: (a) terdapat perjanjian atau gabungan usaha dalam kalangan defendan-defendan dan ETL untuk mencederakan plaintif; dan (b) terdapat perbuatan yang dilakukan di bawah perjanjian ini atau gabungan usaha untuk mencederakan plaintif. Bagi elemen ketiga, berdasarkan keterangan, plaintif telah mengalami penurunan yang ketara dalam pendapatan bulanannya mengikut pelanggan dalam tempoh semasa dan selepas pemerbadanan ETL dan defendan-defendan meninggalkan plaintif. Berdasarkan dapatan-dapatan di atas, plaintif telah memenuhi, di atas imbangan kebarangkalian, unsur-unsur bagi kausa tindakan konspirasi untuk mencederakan. Mahkamah mendapati bahawa, lebih berkemungkinan daripada tidak, terdapat persetujuan atau gabungan usaha di pihak defendan-defendan dan ETL, sebagai entiti undang-undang, yang dibuat dan dilakukan untuk mencederakan plaintif (iaitu untuk mengambil atau mengalihkan perniagaan daripada plaintif) (lihat perenggan 84–86, 88, 98 & 101).]

Cases referred to

Anton Piller KG v Manufacturing Processes Ltd and others [1976] 1 All ER 779, CA (refd)

Coco v AN Clark (Engineers) Ltd [1969] RPC 41, HC (refd)

Dynacast (Melaka) Sdn Bhd & Ors v Vision Cast Sdn Bhd & Anor [2016] 3 MLJ 417; [2016] 3 AMR 725; [2016] 6 CLJ 176; [2016] 4 MLRA 346, FC (refd)

I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others [2020] 1 SLR 1130, CA (folld)

Muniandy a/l Nadasan & Ors v Dato' Prem Krishnan Sahgal & Ors [2016] 11 MLJ 38; [2016] MLRHU 324, HC (refd)

Norwich Pharmacal Co and Others v Customs and Excise Commissioners [1973] 2 All ER 943 (refd)

Renault SA v Inokom Corp Sdn Bhd & Anor and other appeals [2010] 5 MLJ 394; [2010] 5 CLJ 32; [2008] 3 MLRA 504, CA (folld)

Schmidt Scientific Sdn Bhd v Ong Han Suan & Ors [1997] 5 MLJ 632; [1998] 1 CLJ 685; [1997] 4 MLRH 200, HC (folld)

Seager v Copydex Ltd [1967] 2 All ER 415, CA (refd)

Svenson Hair Center Sdn Bhd v Irene Chin Zee Ling [2008] 7 MLJ 903; [2008] 8 CLJ 386; [2008] 2 MLRH 339, HC (folld)

Thomas Marshall (Exports) Ltd v Guinle [1978] 3 All ER 193, Ch D (folld)

Worldwide Rota Dies Sdn Bhd v Ronald Ong Cheow Joon [2010] 8 MLJ 297; [2010] 6 MLRH 402; [2010] AMEJ 0162; [2010] 1 LNS 444, HC (refd)

HR Dipendra (with Zarif Zahirah) (Ramesh Dipendra Jeremiah Law) for the plaintiff.

Tan HS (with Isaac Huang and Tan Zhen Yu) (Peter Huang & Richard) for the first, second and third defendants.

Kenneth St James JC:

PRELIMINARIES

[1] This trial took five evidence-gathering days. Those dates were 30 September 2020, 12 October 2020, 1 November 2022, 2 November 2022, 14 November 2022. I started hearing this matter as a part-heard trial, from 1 November 2022 (from day three).

PRELUSION

[2] This case is about a company's former employees allegedly using the company's confidential information (information that is exclusive to the company) for the employees' own benefit and the benefit of the company which they set up to do a similar business in the same industry.

THE PLAINTIFF'S CAUSES OF ACTION

[3] The plaintiff's causes of action are for breach of confidence and conspiracy to injure.

PARTIES AND POSITIONS

[4] The plaintiff ('OTL') provides cross-border transportation and warehousing services. OTL's business spans across nine countries in Southeast Asia and China. By 2018 (the material time), OTL had been in this business for 29 years.

[5] The first defendant ('D1') was OTL's marketing manager. He identified new customers in Southeast Asia for cross-border trucking services.

[6] The second defendant ('D2') was OTL's general manager. He managed OTL's business. He managed price-related matters, cargo routes and insurance.

[7] The third defendant: Euroasia Total Logistics Sdn Bhd ('ETL') is in the same business as OTL. ETL was incorporated in August 2018 (28 August 2018).

[8] D1 worked for OTL from April 2016 to September 2018 (18 September 2018).

[9] D1 was ETL's founding director. He was the director since ETL's incorporation date: 28 August 2018.

[10] D2 worked for OTL from March 2009 to July 2018 (3 July 2018).

[11] D2 joined ETL in October 2018 (1 October 2018). D2 joined ETL approximately one month after its incorporation.

[12] D1 is ETL's Chief Executive Officer ('CEO'). And D2 is ETL's Chief Operating Officer ('COO').

[13] I will refer to D1 and D2 together as 'D1D2'.

ISSUES TO BE TRIED

[14] The agreed issues to be tried are:

(a) whether D1D2's use or disclosure of OTL's confidential information and documents ('CIAD') for D1D2's benefit or ETL's benefit, without OTL's authorisation or consent, is a breach of D1D2's duty of confidentiality to OTL. I will refer to this cause of action as 'breach of confidence';

(b) whether D1D2's use or disclosure of OTL's CIAD for ETL's operations constitutes a tort of conspiracy to injure OTL; and

(c) if the answer to either or both of these issues is yes, then whether OTL is entitled to the reliefs and remedies prayed for.

OTL'S RELIEFS AND REMEDIES

[15] OTL prayed for reliefs and remedies that include:

(a) a permanent injunction to restrain D1D2 and ETL, and persons associated with them, such as agents or servants, from dealing with or divulging OTL's CIAD;

(b) an order to compel D1D2 and ETL, and persons associated with them, such as agents or servants, to 'remove or recover' OTL's CIAD which D1D2 and ETL have 'retained or disclosed';

(c) an order that D1D2 and ETL affirm an affidavit giving the particulars of 'where' they 'divulged' OTL's CIAD (quoting the words used by OTL);

(d) an order to compel D1D2 and ETL to deliver OTL's CIAD which are in their possession to OTL, and to give an undertaking that they no longer have OTL's CIAD;

(e) an order that ETL ceases operations;

(f) for damages to be assessed; and

(g) an order to pay the amount of damages assessed.

OTL's CONFIDENTIAL INFORMATION AND DOCUMENTS

[16] OTL's CIAD, as pleaded in paras 54 to 59 of its statement of claim, include:

(a) particulars of OTL's shippers' and consignees' addresses;

(b) OTL's business proposal and PowerPoint presentation (created in August 2017) on the new routing and solutions in China, and the standard operation procedures ('SOPs') for cargo storage;

(c) rates and price quotations for railroad services;

(d) particulars of OTL's trucking arrangements in Myanmar, with the number of customers and potential customers;

(e) particulars of OTL's business arrangements with its customers;

(f) particulars of OTL's customers and agents, and information about customs such as customs registered lists, shipping methods, total business plans, trucking and cost arrangements (in particular with WICE Logistics Public Company of Thailand ('WICE'));

(g) OTL's feeder trucking rates in China;

(h) price quotation for OTL's services from Penang to China;

(i) OTL's railroad services;

(j) double-decker container particulars and a report on the double-decker load test;

(k) a diagram of data logger placement temperature, and a multiple temperature graph (with and without external ambient);

(l) OTL's draft transport service agreement for potential customers;

(m) OTL's list of key customers and normal customers;

(n) particulars of OTL's China business, for instance, OTL's procedures and warehousing in the city of Shenzen;

(o) OTL's costing in Vietnam;

(p) OTL's agenda for the meeting between OTL and OTL China;

(q) templates for company business introduction;

(r) particulars of the Southeast Asia rail carrier price list;

(s) particulars of OTL's quotation from a rail carrier from Changsha, China to Poland;

(t) particulars of a shipment from Wisetek, Thailand to Telephan, Penang;

(u) particulars of a dedicated truck from Bukit Jelutong, Penang to Bangkok;

(v) particulars of shipments from Shanghai, China to Vietnam;

(w) OTL's price list;

(x) OTL's cross-border pricing particulars;

(y) particulars of invoices; and

(z) particulars of all existing customers, potential customers, agents, business partners and other persons and entities which OTL have business dealings with.

[17] OTL's primary witness ('PW1') Kong Jen Siang, who is OTL's present CEO, testified that OTL's CIAD which D1D2 took (forwarded to themselves or downloaded into their own external hard drive) are information and documents that relate to:

(a) OTL's operations;

(b) OTL's business plans, methods and strategies;

(c) OTL's marketing plans;

(d) OTL's lists of customers and their particulars;

(e) OTL's specific routes that OTL uses, including information about the respective different countries' customs requirements, profitable and not-profitable routes, and point-of-origin and point-of-destination timings;

(f) OTL's logistics hubs; and

(g) OTL's cost and price structures.

BREACH OF CONFIDENCE

[18] The landmark case on breach of confidence is the 1969 UK case of *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41, where the court (Justice Megarry) held that three elements must be satisfied to establish the cause of action:

(a) the information has the quality of confidentiality or has a confidential nature;

(b) the information was communicated in circumstances that contain an obligation of confidence; and

(c) there must be an unauthorised use of the information to the plaintiff's detriment.

[19] The guiding case for the cause of action for breach of confidence is the Federal Court case of *Dynacast (Melaka) Sdn Bhd & Ors v Vision Cast Sdn Bhd & Anor* [2016] 3 MLJ 417; [2016] 3 AMR 725; [2016] 6 CLJ 176; [2016] 4 MLRA 346(FC). The same three elements for the cause of action for breach of confidence were applied, with slightly different expressions:

(a) the information itself must have the necessary quality of confidence;

(b) the information must have been imparted in circumstances importing an obligation of confidence; and

(c) there must be an unauthorised use of that information, to the detriment of the party communicating it.

[20] An added factor, where it is relevant, is that in cases of breach of confidence when there is a contract between the parties, the elements of the cause of action must be analysed by 'construing the contract and any terms implied in it'.

OTL'S COMPANY HANDBOOK

[21] OTL has a company handbook which contains the rules, regulations, procedures and policies that govern the relationship between OTL, as the employer, and its employees, like D1D2.

[22] D1 feigned ignorance about the company handbook. He testified, in cross-examination, that although he knew about the existence of the company handbook, he had never seen it. And as he has never seen it, he is not bound by its terms.

[23] This assertion is untenable because OTL conducted two training sessions to brief its employees about the company handbook. D1 attended both training sessions. I therefore find that the terms of the company handbook are binding on D1D2.

[24] Clause 1.8.1 of OTL's company handbook is about the employees' 'Duty of Confidentiality'. This clause provides that:

(a) employees are given access to OTL's confidential information in the course of their employment. The confidential information includes a whole host of pertinent information that may be detrimental to OTL if it is 'wrongly disclosed or used'. The confidential information includes OTL's 'business methods', 'corporate plans', 'management systems', 'price structure', 'clientele particulars or contacts', 'trade secrets', and 'processes';

(b) the confidential information is 'solely' for the employees' work, and 'not

for their own or another party's benefit'. The confidential information must not be used 'in such a manner as would in the reasonable contemplation of the employees be detrimental to (OTL's) interests';

(c) the employees are not to 'copy, reproduce or reduce to writing' any of the confidential information, except to fulfil 'their employment obligations'; and

(d) the employees are to hold the confidential information 'on trust' for OTL, and must 'forthwith return' it to OTL 'upon cessation or termination of employment'.

[25] Clause 1.8.2 is about the employees' 'Duty of Fidelity'. This clause provides that:

(a) the employees must not, 'during their employment' with OTL, 'whether directly or indirectly', or 'on their accord or on behalf of others', 'be engaged in any other businesses or commercial activities' without OTL's prior consent; and

(b) the employees must not 'deal contrary to the interests of [OTL]', with any 'competitor, customer or supplier'.

WHAT DID D1D2 DO?

[26] In the context of breach of confidence, I find that the evidence discloses that the following is what D1D2 did.

D1 — Downloading OTL's CIAD onto his own external hard drive

[27] D1 resigned from OTL on 17 August 2018. While he was serving out the notice period, D1 wrote to OTL on 18 September 2018, asking for an early release. He stopped work on the next day: 19 September 2018.

[28] D1 downloaded OTL's CIAD contained in the work laptop given to him, onto an external hard drive. D1 did this on 17 September 2018, while he was in his resignation notice period, and two days before he stopped working in OTL on 19 September 2018.

[29] The evidence of D1 downloading OTL's CIAD was extracted and produced by OTL's expert witness — a computer forensic expert, who examined D1's work laptop.

[30] D1 attempted to give an excuse for downloading OTL's CIAD onto an external hard drive, which turned out to be his own eternal hard drive. He argues that because of a ransomware attack in the past, OTL's personnel were

instructed to back up the data that was in their respective work computers. D1 testified that he downloaded the content of his work laptop onto an external hard drive, which he admitted belonged to him, to comply with this instruction.

[31] I find this explanation incredible. I find it incredible because he did this a day before he wrote to OTL for an early release, and a mere two days before his last day of work in OTL. I find it incredible that he did this because he was merely diligently complying with work protocol.

[32] Additionally, by that date (17 September 2018), he had already struck an agreement with WICE for WICE to finance him to incorporate, start and manage ETL and its business.

[33] WICE is the Thai company which was, at the time, OTL's customer. D1 formed a partnership with WICE in what D1 himself called a 'once in a lifetime' opportunity to set up ETL to do the same business as OTL, intending to get ETL publicly listed in five years.

[34] I find it unbelievable that D1 would, at that point in time, want to comply with OTL's operational instruction to back-up the data in his work laptop, which he knew he had to return to OTL in any event a couple of days later. It is revealing, and incriminating as well, that D1 downloaded OTL's CIAD onto his own external hard drive, so that he could have possession and control of OTL's CIAD.

[35] On the balance of probabilities, I find that quite contrary to his excuse of complying with OTL's operational instruction to preserve OTL's data to deal with another ransomware attack, D1 downloaded OTL's CIAD onto his own external hard drive to use OTL's CIAD for his own benefit and ETL's benefit. He had already incorporated ETL by then — he incorporated ETL on 28 August 2018.

D2 — Downloading and forwarding OTL's CIAD by email to himself

[36] D2 extracted and downloaded OTL's CIAD and forwarded them by email to his personal email account and another email account which he admitted in cross-examination to be another one of his email accounts. D2 did this on two occasions. He did this on 27 June 2018 (two days after he resigned) and again on 2 July 2018 (seven days after he resigned).

[37] D2's excuse for doing this was that he needed to be able to access OTL's CIAD when he did not have access to his work laptop.

[38] In cross-examination, D2:

(a) admitted that OTL's CIAD he downloaded and emailed to himself — was critical company information;

(b) testified that the routing (the routes) was only known to him and OTL's former managing director: Mr Chia;

(c) testified that the information downloaded and forwarded was important, essential information for him to perform his job at OTL as the general manager;

(d) admitted that while he was still employed by OTL, if a competitor had asked him for OTL's CIAD, he would not have given OTL's CIAD to the competitor; and

(e) admitted that under his employment agreement with OTL, he knew that he was not supposed to use OTL's CIAD.

[39] These admissions in his testimony are damning of him. D2's reason for sending OTL's CIAD to himself after he resigned, to my mind, obliterates (wipes out) his explanation that he sent OTL's CIAD to himself so that he could access OTL's CIAD when he no longer had access to his work laptop. In fact, his explanation discloses his wrongful purpose — to have access to OTL's CIAD when he no longer worked for OTL.

[40] I therefore, on the balance of probabilities, find that D2 emailed OTL's CIAD to himself to use them for his own benefit and by extension for ETL's benefit when he became ETL's COO.

No authority to download

[41] Both D1D2 did not produce evidence that they either asked for, or were given, the authority or permission to download OTL's CIAD onto an external hard drive, or to forward them to their personal email accounts.

[42] D1D2 also did not produce any evidence that they had informed OTL that they were downloading OTL's CIAD for their own use or for some other use.

The use of OTL's CIAD

[43] OTL discovered in October 2018 (two months after D1 incorporated ETL in August 2018), that D1D2 and ETL had approached no fewer than six of OTL's customers to persuade them to use ETL's services.

[44] D1D2 and ETL did not rebut this evidence. They merely submit that they should not be prohibited from approaching OTL's customers for business.

[45] D1D2 and ETL further submit that it was not as if OTL's customers stopped doing business with OTL when they (the customers) started doing business with ETL. They argued that those customers continued to do business with OTL while they gave some business to ETL as well.

[46] To my mind, the issue is not whether D1D2 and ETL should be prohibited from approaching OTL's customers for business after D1D2 have left OTL. The issue is whether D1D2 and ETL should be prohibited from using OTL's CIAD to procure business from OTL's customers, to perform that same business with them, leading to OTL's detriment.

[47] If D1D2 and ETL used OTL's CIAD to procure and do the same business with OTL's customers, there would naturally, and on the balance of probabilities, be a diversion of those customers' businesses from OTL to ETL.

PRINCIPLES TO HEED FROM CASE LAW AUTHORITIES

[48] In *Worldwide Rota Dies Sdn Bhd v Ronald Ong Cheow Joon* [2010] 8 MLJ 297; [2010] 6 MLRH 402; [2010] AMEJ 0162; [2010] 1 LNS 444 (HC), Justice Abdul Malik Ishak — who, at para [78], cited Justice RK Nathan in *Schmidt Scientific Sdn Bhd v Ong Han Suan & Ors* [1997] 5 MLJ 632; [1998] 1 CLJ 685; [1997] 4 MLRH 200 (HC), applying Lord Denning MR in *Seager v Copydex Ltd* [1967] 2 All ER 415 — adopted the principle that where someone is given or has received confidential information, knowing it to be confidential, that person has the duty not to take an 'unfair advantage' of the confidential information, or to use it to injure the person who gave him or her the confidential information.

[49] I also gleaned from *Worldwide Rota* the principle that there is an advantage to having information that is not publicly known because someone can use the information to allow a competitor to undercut the proprietor of the information.

[50] In *Schmidt Scientific*, I am instructed, at MLJ p 648, that — 'information relating to cost prices, quoted prices, specific needs and requirements of customers and suppliers, [the] status of on-going negotiations with the customers, and price list' — are all 'highly confidential' and 'not generally known in the market'. This information can be used by a competitor to 'undercut' OTL 'in terms of prices' and 'interfere with [OTL's] ongoing contracts'.

[51] And in *Svenson Hair Center Sdn Bhd v Irene Chin Zee Ling* [2008] 7 MLJ 903; [2008] 8 CLJ 386; [2008] 2 MLRH 339 (HC), particularly in para [11], I am guided that particulars such as 'customers' names, lists and details' have been judicially recognised to have confidentiality or to be confidential in nature, and that such information could not become part of the employee-defendant's 'own skill, knowledge and business experience', to be used without restraint.

[52] Then from *Thomas Marshall (Exports) Ltd v Guinle* [1978] 3 All ER 193, I am instructed that the nature of the information that should be protected is:

(a) the information must be information that, if it is released, would be injurious to the proprietor of the information, or would be advantageous to a competitor;

(b) the proprietor of the information believes that the information is confidential (it is not or not yet in the public domain);

(c) the proprietor believes that the above two elements must be reasonable (which to my mind means that the two elements above must be reasonably answered); and

(d) the information must be evaluated in the light of the use and practice of the industry.

DOES OTL'S CIAD, WHICH D1 DOWNLOADED ONTO HIS EXTERNAL HARD DRIVE AND WHICH D2 EMAILED TO HIMSELF, HAVE A CONFIDENTIAL QUALITY?

[53] A pivotal variable factor that affects OTL's contracts with its customers and potential customers is price. Whether or not OTL gets to continue to do business with its existing customers, or continues to do as much business, or more business, with its existing customers — critically depends on its respective prices for the respective customers. The price factor is the key factor that determines whether OTL gets the contract (business) or not. As such, the information relating to OTL's prices is inherently confidential.

[54] By extension, all the other variable factors that affect the price that OTL quotes to a particular customer for a particular service, are also pivotal determinant factors. For instance, OTL's information about its cost for a particular service from a point of origin to a particular destination. The information surrounding these other variable factors must certainly be confidential as well.

[55] If OTL's competitor gets possession of the information relating to OTL's prices, as well as the information about the other factors that affect OTL's prices (such as cost) — that competitor can do a lot of harm to OTL with that information. The least of that harm would be to simply undercut OTL's prices to OTL's customers, to divert away OTL's business with those customers to the competitor instead.

[56] On these premises, I find, on the balance of probabilities, that OTL's CIAD that D1 downloaded onto his external hard drive and that D2 emailed to himself, have a confidential quality, and that the CIAD was used by D1D2 and ETL to get an unfair advantage for their own business, to OTL's detriment, such as undercutting OTL's prices to its customers, who have now become D1D2 and ETL's customers instead.

WAS P'S COMMUNICATION OF ITS CIAD DONE IN CIRCUMSTANCES THAT IMPORT AN OBLIGATION OF CONFIDENCE?

[57] As D1D2 were employees in OTL in positions of importance, I find that D1D2's possession of OTL's CIAD to perform their work for the furtherance of OTL's business, and the fact that OTL's CIAD were acquired through the experience of doing its business for approximately 30 years — I find, on the balance of probabilities, that the communication and impartation of OTL's CIAD to D1D2 were done in circumstances that call for, or compel, an obligation of confidence on the part of D1D2.

THE HEAVY BURDEN TO PROVE THERE WAS UNAUTHORISED USE THAT CAUSES DETRIMENT

[58] As alluded to above, the third element to satisfy under the *Coco v AN Clark* elements for the cause of action for breach of confidence is — the defendant's unauthorised use of the plaintiff's confidential information to the plaintiff's detriment.

[59] There is an inherent and circumstantial difficulty for the plaintiff to prove that there was unauthorised use of the plaintiff's confidential information by the defendant that directly resulted in the plaintiff's detriment (loss or damage). This difficulty is, in part, because the defendant — in similar factual circumstances as in this suit — had left the plaintiff's employ, and the evidence of the defendant's conduct concerning the plaintiff's confidential information is expectedly beyond the knowledge, or possession, or procurement, or reach of the plaintiff.

[60] Procedural reliefs and measures such as *Anton Piller* orders or *Norwich*

Pharmacal discovery orders may, to a small extent, reduce the difficulty of procuring the evidence of the defendant's unauthorised use. But the burden, in my view, is still prohibitively high. The plaintiff will have to engage in heavily-contested and protracted procedural litigation in an endeavour to obtain the necessary evidence, before the plaintiff can focus on the merits of the breach of confidence suit proper. The breach of confidence suit will tend to be sidelined and paused, on account of the *Anton Piller* or *Norwich Pharmacal* proceedings (an *Anton Piller* order is a court order that permits a plaintiff to search a defendant's premises and usually inspect and seize the documentary or other forms of evidence. A *Norwich Pharmacal* discovery order is a court order that compels a person to disclose or produce incriminating evidence against another person or other persons).

[61] To decide on this issue, I find guidance in the Singapore Court of Appeal case law authority of *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 (SGCA), particularly at paras [55], [57] to [62], where the Singapore Court of Appeal moved away from the requirement that the plaintiff in a breach of confidence suit has to actively prove the defendant's unauthorised use of the plaintiff's confidential information, which leads to the plaintiff's loss and damage.

[62] The Singapore Court of Appeal propounded what it termed the 'modified approach' where the burden is shifted to the defendant to prove that there was no unauthorised use resulting in the plaintiff's detriment.

[63] I can do no better than to set out the pertinent portions of the judgment in *I-Admin (Singapore)* that show the rationale and reasoning of the Singapore Court of Appeal, through the written grounds of Chief Justice Sundaresh Menon, in expounding this modified third element:

> [55] ... It is now significantly easier to access, copy and disseminate vast amounts of confidential information. This can be done almost instantaneously, often without the knowledge of plaintiffs. As in the present case, *employees will often have access to large volumes of confidential business material for the purposes of their employment. If at some point they were to proceed to surreptitiously download this information for their personal use or to start a competing business, employers are likely to be none the wiser for a considerable time*. It is nearly impossible in these situations to safeguard information from all potential wrongdoing. *The fragility of such confidential information suggests the need for stronger measures to protect owners from loss* ...
>
> ...
>
> [57] ... *The owner of the compromised information may know he has suffered loss but may only be able to speculate as to how, for example, this will negatively affect his business or future operations. This means that even a simple claim for damages will not necessarily succeed.*
>
> *Modified approach*

[58] ... *we consider that the current legal framework does not adequately safeguard this interest or offer recourse where it has been affected* ...

[59] ... we take cognisance of recent developments in England and Australia. In *Imerman v Tchenguiz and others* [2011] 2 WLR 592 ('*Imerman*') *the English Court of Appeal relaxed the prerequisite of use and detriment* and held that the act of looking at documents, which one knows to be confidential or 'intentionally obtaining [confidential] information, secretly and knowing that the claimant reasonably expects it to be private, is itself a breach of confidence' (per Lord Neuberger MR at [68]). These are actionable wrongs because 'the information will, through the unauthorised act[s] of the defendant, either lose its confidential character, or will at least be at risk of doing so' (*Imerman* at [69]). The reasoning in *Imerman* emphasises a plaintiff's right to preserve the confidentiality of their information ... *The Federal Court of Australia in Smith Kline ([51]) similarly held that the court's equitable jurisdiction to grant relief for a breach of confidence may be invoked where there is 'actual or threatened abuse of confidential information*' (Emphasis added.) (at 593). An obligation of confidence may be breached even where a wrongdoer has yet to actually profit from misuse.

[60] These decisions were also discussed by the High Court in *Clearlab* ([20]). By way of background, the plaintiff company in *Clearlab* manufactured and sold contact lenses and possessed a wealth of relevant confidential information for this purpose. A number of the plaintiff's employees subsequently joined a rival company called 'Aquilus'. Before leaving the plaintiff's employ, they took confidential documents, without authorisation, to create a database of information from which Aquilus could extract useful information. As there were clear instances where the defendants had actually used the plaintiff's materials for various purposes, the court was not required to address the question of whether the mere taking of confidential information, in the absence of use or disclosure, would constitute a breach of confidence. Nevertheless, the court summarised the positions taken in *Imerman* and *Smith Kline* before making the following observations (at [205]):

> [T]he courts have accepted that *accessing, acquiring or threatening to abuse ... confidential information may also form a breach of confidence*. The turning point for this development seems to be an awareness that an obligation of confidence is ineluctably shaped by the particular facts of the case. I can imagine that the relationship between the parties, the manner in which confidential information was obtained, the measures taken to safeguard confidentiality, etc, would define the boundary of the defendants' obligation of confidence and, in turn, affect the analysis of whether the obligation was indeed breached. Thus, *whether there has been breach of confidence appears to be a question of fact and degree that must be regarded in its wider context*.

This dicta is useful in so far as it *recognises the fluidity in the scope of a defendant's obligation of confidence* ...

[61] With these considerations in mind, *we set out a modified approach that should be taken in relation to breach of confidence claims*. Preserving the first two requirements in *Coco* ([20]), a court should consider whether the information in question 'has the necessary quality of confidence about it' and if it has been 'imparted in circumstances importing an obligation of confidence'. *An obligation of confidence will also be found where confidential information has been accessed or acquired without*

> *a plaintiff's knowledge or consent*. Upon the satisfaction of these prerequisites, an action for breach of confidence is presumed. This might be displaced where, for instance, the defendant came across the information by accident or was unaware of its confidential nature or believed there to be a strong public interest in disclosing it. Whatever the explanation, *the burden will be on the defendant to prove that its conscience was unaffected* ...
>
> [62] *A shift in the burden of proof also addresses the practical difficulties faced by owners of confidential information in bringing a claim in confidence. As noted at [55], plaintiffs may often be unaware of the fact that someone has done an act inconsistent with their right of confidentiality. A potential breach could be discovered years after, placing them on an evidential back-foot. defendants are comparatively better positioned to account for their suspected wrongdoing*. (Emphasis added.)

[64] It is my respectful view that our law on breach of confidence claims should also *progress* from the conventional third element of requiring the plaintiff, in all cases, to prove unauthorised use and detriment — which was propounded a significantly long time ago in 1969 through *Coco v AN Clark* — to the *more-equitable* shift of the burden to the defendant to prove that there was no unauthorised use which caused detriment to the plaintiff.

[65] I would therefore, if necessary, adopt this *refined* and *more robust* approach, to apply it to this breach of confidence claim, because I am of the view that it will lead to a just and fair result. Instead of the burden that is conventionally placed on the plaintiff to prove that the defendants used the confidential information to the plaintiff's detriment, the burden should be on the defendants to prove that there was no unauthorised use of the plaintiff's confidential information to the plaintiff's detriment.

Applying the law to the facts

[66] In the premises, these are my findings.

[67] On the first element, the evidence shows, and I so find, that OTL's CIAD, which contain particulars of price, costs, routes and clients' requirements and preferences — are confidential in nature, quality and character.

[68] On the second element, I find that OTL's CIAD were imparted to D1D2 in circumstances that place an obligation of confidence on D1D2 — the evidence demonstrates that D1D2, as OTL's employees, were in possession of OTL's CIAD because of their work, which undoubtedly carries with it the obligation to keep the CIAD confidential.

[69] On the third element of D1D2's unauthorised use of OTL's CIAD to OTL's detriment — firstly, the evidence discloses that D1D2 took OTL's CIAD by downloading the CIAD into his external hard drive (D1), and by forwarding the CIAD to himself (D2).

[70] Secondly, D1 admitted that he partnered with WICE to form ETL, with the ambitious objective of listing ETL in five years. This evidence is the basis on which I infer, on the balance of probabilities, that there was, in some manner, unauthorised use of OTL's CIAD (which was created through 29 years of doing business) for D1D2 and ETL's benefit. OTL's CIAD would go a long way to shorten the time that it would normally take a start-up company like ETL, in the cross-border logistics industry, to get publicly listed.

[71] Why else would D1D2 download and forward to themselves OTL's CIAD? This evidence is the basis on which I find, on the balance of probabilities, that D1D2 could have had no other pertinent purpose for getting OTL's CIAD but to use the CIAD to accelerate and enhance ETL's business. And by doing so, they would inevitably cause detriment to OTL.

[72] D1D2 and ETL would immediately possess the information and documents that they need, to bring their business to be on par with a company like OTL, which has 30 years' worth of experience in the industry.

OTL SUFFERED DETRIMENT

[73] OTL's table of monthly revenue from August 2018 to February 2020 discloses that OTL's monthly revenue, according to clients, dropped for that period. August 2018 was when D1 incorporated ETL. September to October 2018 was when D1D2 started ETL's directly competing business.

[74] D1D2 and ETL needed to get business fast. D1 testified that he had the task of achieving the kind of high-level business that would enable ETL to be listed on the stock exchange in a mere five years. Armed with OTL's CIAD, which was acquired and formulated over three decades of business, D1D2 and ETL could fast-track ETL to the volume of business and level of revenue that could take ETL public.

[75] I find that it is not a coincidence that just as D1D2 left OTL to start doing business through ETL, OTL's month-by-month revenue significantly dropped. There is a cause and effect between ETL starting its business and OTL's continued drop in monthly revenue.

[76] Taking three of OTL's customers — Biforst, Agility and DBS:

(a) Biforst — RM459,000 (in August 2018), dropped to RM0 (by February 2020);

(b) Agility — RM3.3m (in August 2018), dropped to RM761,000 (by Feb 2020);

(c) DBS — RM958,000 (in August 2018), dropped to RM17,000 (by February 2020).

[77] As such, on the third element, I find that on the balance of probabilities, there was unauthorised use of OTL's CIAD by D1D2 and ETL to OTL's detriment. To my mind, OTL has sufficiently demonstrated that D1D2 and ETL used OTL's CIAD to OTL's detriment.

[78] I find that OTL has sufficiently proven the three elements of its cause for breach of confidence.

[79] In any event — following the progressive principle propounded in *I-Admin (Singapore)*, which I prefer to the 1969 *Coco v AN Clark* conventional approach — I find that D1D2 and ETL did not produce any evidence that directly proves, or any evidence from which it can be inferred, that there was no unauthorised use of OTL's CIAD to OTL's detriment. Or conversely, that their use of OTL's CIAD was authorised. Or, where D1D2 and ETL used OTL's CIAD, their use of OTL's CIAD did not cause OTL any loss or damage ie did not lead to OTL's detriment.

[80] For these reasons, I find that D1D2 and ETL are liable to OTL for the tort of breach of confidence.

CONSPIRACY TO INJURE

[81] The guiding case for the cause of action for conspiracy to injure is the Court of Appeal case of *Renault SA v Inokom Corp Sdn Bhd & Anor and other appeals* [2010] 5 MLJ 394; [2010] 5 CLJ 32; [2008] 3 MLRA 504 (CA), which sets out the elements of the cause of action. The elements were elaborated on in *Muniandy a/l Nadasan & Ors v Dato' Prem Krishnan Sahgal & Ors* [2016] 11 MLJ 38; [2016] MLRHU 324 (HC).

[82] From these case law authorities, I gleaned that there are three elements in the cause of action of conspiracy to injure:

(a) an agreement or a combination of efforts between two or more persons to injure (note: the agreement or combination of efforts may be formal or informal, or in writing or by word of mouth);

(b) there are acts done under the agreement or a combination of efforts to injure the plaintiff; and

(c) the plaintiff has suffered damage from those acts.

WHAT DID D1D2 DO?

[83] In the context of the tort of conspiracy to injure, the evidence discloses that this is what D1D2 did.

D1D2's introduction letter

[84] D1D2 authored a template general letter to introduce ETL and its business to potential customers. In this letter, D1D2 offer the use of a state-of-the-art appliance which they named the Smart Lock. D1D2 described their Smart Lock as 'an inner locking device using WiFi signal to upgrade on reliability on the activation and deactivation of the inner locking mechanism'.

[85] I find, however, that D1D2's Smart Lock is a direct reference to OTL's E-Lock. The proprietary information of OTL's E-Lock system includes information such as:

(a) there is no way to lock or unlock the container from outside the container;

(b) the E-Lock can only be locked and unlocked by mobile phone SMS, barcode scanner or a unique keypad; and

(c) OTL is the only company that owns the E-Lock system in the region where they do business.

[86] Although this information about OTL's E-Lock may not be information that is meant to be confidential, I refer to it in my consideration of OTL's cause of action for conspiracy to injure. The fact that D1D2 made a direct reference to OTL's E-Lock contributes to the evidence that satisfies two of the three elements of the cause of action for conspiracy to injure, namely:

(a) there was an agreement or a combination of efforts among D1D2 and ETL to injure OTL; and

(b) there were acts committed under this agreement or combination to injure OTL.

[87] I find, on the balance of probabilities, that D1D2 and ETL's direct reference to the features of OTL's E-Lock constitutes either an agreement or a combination among D1D2 and ETL to get an advantage over OTL, with the purpose of injuring OTL. D1D2 and ETL were informing OTL's existing

customers, as well as potential customers with whom they wish to do business, that they too have, at their disposal, an E-Lock system that has the same features and reliability as OTL's E-Lock system.

[88] Further, in this introduction letter, D1D2 represent to the recipients and readers of the letter that they bring with them eight years' experience in the industry, 'gained through their employment with a pioneer and prominent CBRF (cross border road freight) company' — obviously referring to OTL. They also state that they have experience 'covering territories in SEA, as well as Hong Kong and China'.

[89] To me, this further contributes to the evidence of D1D2 and ETL committing the tort of conspiracy to injure.

ETL's company profile

[90] Relatedly, the first edition of ETL's company profile, which would have been prepared in 2018 (ETL was incorporated in August 2018), contained photos which were copied from *OTL's* October 2017 company profile. ETL used the *exact same photos*.

[91] An example of the blatant act of copying or reproducing the photos and content of OTL's October 2017 company profile on ETL's own company profile, is the page that describes OTL's E-Lock system. D1D2 and ETL copied and reproduced the photos and content of *the entire page* that describes OTL's E-Lock system. D1D2 and ETL merely amended the header for that page to say 'ELock container' and to place ETL's logo at the top of the page. The remainder of the page was a complete reproduction.

[92] In fact, ETL's page is so obviously a copy or reproduction of OTL's page that ETL's page contained the statement '*OTL* is the only company that owns this E-Lock technique in the region'. D1D2 and ETL did not bother to even amend the statements that they were attempting to copy or reproduce.

[93] Even though there is no issue of copyright infringement or passing off in this suit, I am referring to this evidence in my consideration of OTL's cause of action for conspiracy to injure.

[94] It was only in ETL's January *2019* edition of its company profile that D1D2 and ETL changed the contents of their company profile. Even then, D1D2 and ETL still continued to use several of the same photos from OTL's company profile.

[95] As for the page that describes OTL's E-Lock system, ETL changed the name of the lock to 'Smart Lock'. But even then, ETL still continued to use the photos or images from OTL's E-Lock page from OTL's company profile.

D1 incorporating ETL and D2 joining him soon after

[96] The evidence discloses that D1 incorporated ETL while he was still employed by, and hence still obligated to serve OTL. ETL — incorporated to do the same or at least a similar business as OTL — is OTL's direct competitor. The facts presented in this suit create a real and serious risk of a diversion of business from OTL to ETL.

[97] D2, who was a key management personnel in OTL, joined D1 and ETL, hardly more than a month after he left OTL. This fact contributes further to the inference that there was a conspiracy among them to injure OTL, for the purpose of enhancing their new venture and business.

Plaintiff suffered loss and damage

[98] As I alluded to above under the cause of action for breach of confidence, the evidence discloses that OTL suffered a considerable drop in its monthly revenue according to clients in the period during and after ETL's incorporation and D1D2 leaving OTL.

[99] I reiterate that it is not a coincidence that just as ETL was incorporated and D1D2 left OTL's employ, OTL started to lose business from a list of its customers, including Biforst, Agility and DBS.

[100] I therefore find that on the balance of probabilities, OTL suffered a measure of loss and damage as a result of D1D2 and ETL's agreement or combination of efforts to injure OTL.

Applying the law to the facts

[101] Again applying the law to the facts, I find that OTL has satisfied, on the balance of probabilities, the elements for the cause of action of conspiracy to injure. I find that, more likely than not, there was an agreement or some combination of efforts on the parts of D1D2 and ETL, as a legal entity, which were made and done to injure OTL (namely to take or divert business away from OTL).

A CONCLUSION

[102] In all the circumstances, I find that OTL has proved, on the balance of probabilities, its cause of action for breach of confidence, as well as its cause of action for conspiracy to injure. I hold D1D2 and ETL and each of them liable to OTL for breach of confidence and for conspiracy to injure.

[103] I make the following orders in this judgment:

(a) a permanent injunction to restrain the defendants, and each of them, and their agents or servants, from using or dealing with or divulging the plaintiff's confidential information and documents ('CIAD') as pleaded in paras 53 to 59.34 in the amended statement of claim and particularized and defined in the Schedule A, which is annexed to this judgment;

(b) an order that the defendants, and each of them, affirm and file an affidavit particularizing the recipients of the plaintiff's CIAD (including the full details of the recipients, the manner of receipt, the date(s) of transmission or dissemination and other necessary particulars to give effect to this judgment) within seven days from the date of this judgment, failing which the plaintiff is given the liberty to make applications for the discovery, production or inspection of the evidence necessary to give effect to this judgment;

(c) an order that the defendants, and each of them, deliver(s) to the plaintiff, whether in physical or electronic form, all the CIAD that are in their or their agents' or servants' possession, custody or control, within seven days from the date of this judgment, and each of them to affirm an affidavit that they have done so, and that none of them has retained any of the plaintiff's CIAD, within ten days from the date of this judgment;

(d) an order for the assessment of the damages suffered by the plaintiff;

(e) an order that the defendants, and each of them, pay(s) the plaintiff the amount of the damages assessed;

(f) interest at 5%pa on the total amount of damages assessed and ordered by this court to be paid by the defendants to the plaintiff, from the date of the order until the date of full payment;

(g) costs of RM80,000, which is subject to the allocatur, to be paid by the defendants to the plaintiff by 29 February 2024; and

(h) the plaintiff is at liberty to apply.

Order accordingly.

Reported by Dzulqarnain Ab Fatar